

Respondent:

Independent Termite
54 S. Purdue Ave.
New Castle, DE 19720

Violations:

§1224(b)(1) – The first offense of 1224(a)(1). Making a pesticide recommendation or use or application inconsistent with the labeling.

§1224 (a)(10) Neglecting or, after notice, refusing to comply with the LAW, the rules adopted under the LAW, or any lawful order of the Department.

§1224 (c)(2) –Refusing or neglecting to keep and maintain records requires by the LAW, or to make reports when and as required.

Penalty:

Respondent signed a consent agreement on 12/26/2019. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$3080.00

STIPULATED FACTS

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1. Independent Termite (“Respondent Independent”) is a commercial pesticide applicator business with an office located at 54 S. Purdue Ave, New Castle DE 19720. Ray Infante is the owner/operator. Respondent Independent is licensed (License No. 1090) by the Delaware Department of Agriculture (“the Department”).
2. Mr. Ray Infante (“Mr. Infante”) is certified by the Department in Category 8.3.7.1.2 Wood Destroying Pest (Certificate Number 93-691).
3. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondent. James Hughes, (“Mr. Hughes”) is employed as an Environmental Program Manager. Erin Yorston, (“Mrs. Yorston”) is employed as an Environmental Scientist II with the Department.
4. On August 1st 2019, Mrs. Yorston conducted a records inspection with Mr. Infante, Mr. Hughes accompanied Mrs. Yorston to the inspection. The inspection was a result of a consumer complaint against Independent Termite. DDA received phone call from concerned customer regarding the quality of the paperwork and job performance. During this initial inspection Yorston and Hughes asked Mr. Infante whether or not he had done any termite treatments within the last two years. Mr. Infante first responded with “no” and stated he did not have any records of treatment. After continued discussion Mr. Infante admitted that he had completed “quite a bit.”

5. On August 5th 2019, Mr. Infante brought his termite application records to the Department to continue the inspection started on August 1st 2019. Mr. Infante supplied 40 records of termiticide application during the inspection.
6. Using these records Mrs Yorston contacted several homeowners and offered to take soil samples in order to check the termiticide concentration in the treated soils. Mrs. Yorston conducted soil sampling and quality control checks at three of the properties. A review of each record was also conducted. During the records review it was noted that thirty-nine (39) of the records did not include the total amount applied.
7. During the record review process the application to the property located at 79 Pine Valley Drive, Dover DE, 19904 was reviewed. The property in question has a crawl space, no evidence of treatment was noted on the diagram and there was not a disclosure form to accompany the invoice and diagram. The Taurus SC label states in part: Treat crawl spaces by applying a vertical Taurus SC termiticide treatment at the rate of 4 gallons of finished dilution per 10 linear feet per foot of depth from grade to the top of the footing, or , if the footing is more than 4 feet below grade treat to a minimum depth of 4 feet. Apply by trenching or by trenching and rodding into the trench. Treat both sides of foundation and around all piers and pipes.”
8. Delaware Pesticide Rules and Regulations, Revised June 1, 2004, Section 14.1.2 Records states: When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs/acre, etc.)
9. Delaware Pesticide Rules and Regulations, Revised June 1, 2004, Section 22, established requirements for the use of soil applied termiticides. A continuous chemical barrier must be established according to the product label and all applicable areas must be treated as prescribed by the label. Specifically, the Section states:

22.3 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both 22.3.1 and 22.3.2 below must be satisfied:

22.3.1 One or more of the following situations is present:

22.3.1.1 Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

22.3.1.2 Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

22.3.1.3 Specific customer request, or the recommendation of the

certified applicator.

22.3.2 Within fourteen (14) days following the termiticide application, the following information shall be furnished in writing to the customer or to the customer's agent:

22.3.2.1 A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

22.3.2.2 The pesticide used, including brand name and EPA registration number;

22.3.2.3 The actual volume of the termiticide applied;

22.3.2.4 Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, known well heads, and sites of visible termite activity;

22.3.2.5 A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.3.3 This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all completed copies of disclosure documents. Such records shall be made available to authorized employees of the Department upon request.

10. During the sampling of 1219 McKennans Church Road, Wilmington DE 19808, photographs of the exterior areas of treatment were taken. Mrs. Yorston documented areas of the treatment zone that had not been trenched or rodged. The termiticide Taurus SC (EPA Reg. No. 53883-279) was the product used on this property. Taurus SC is a registered for use in the state of Delaware. The Taurus SC label states in part: "Post Construction Conventional Structural Termite Treatment, Application Information. For applications of Taurus SC made after the final grade is installed to protect the structure from termite infestation and/or to control existing termite populations, the applicator must trench and rod into the trench or trench along the foundation walls, around pillars and other foundation elements, at the rate prescribed from grade to the top of the footing. When the footing is more than 4 feet below grade, treat to a minimum depth of four feet."

In the past 5 years, Respondent has no pesticide compliance violations with the Department.